

**Amendment No. 3 to HB0077**

**Hill M  
Signature of Sponsor**

**AMEND Senate Bill No. 1236**

**House Bill No. 77\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following new section:

(a) Notwithstanding §§ 39-15-201, 39-15-211, and 39-15-212, this section governs abortion.

(b) A person shall not purposely perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman when the pregnancy is viable.

(c)

(1) It is an affirmative defense to any criminal prosecution brought under subsection (b) that the abortion was performed or induced, or attempted to be performed or induced, by a licensed physician and that the physician determined, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, that either:

(A) The pregnancy was not viable; or

(B) The abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. No abortion is authorized under this subdivision (c)(1)(B) if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health.

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(2) Except in a medical emergency that prevents compliance with the viability determination required by this section, the affirmative defense set forth in subdivision (c)(1)(A) does not apply unless the physician who performs or induces, or attempts to perform or induce, the abortion makes the viability determination required by this section and, based upon that determination, certifies in writing that, in such physician's good faith medical judgment, the pregnancy is not viable.

(3) Except in a medical emergency that prevents compliance with one (1) or more of the following conditions, the affirmative defense set forth in subdivision (c)(1)(B) does not apply unless the physician who performs or induces, or attempts to perform or induce, the abortion complies with each of the following conditions:

(A) The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in such physician's good faith medical judgment, based upon the facts known to the physician at the time, the abortion is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

(B) Another physician who is not associated in a practice with the physician who intends to perform or induce the abortion certifies in writing that, in such physician's good faith medical judgment, based upon the facts known to the physician at the time, the abortion is necessary to

prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

(C) The physician performs or induces, or attempts to perform or induce, the abortion in a hospital that has appropriate neonatal services for premature infants. This requirement does not apply if there is no hospital within thirty (30) miles with neonatal services and the physician who intends to perform or induce the abortion has admitting privileges at the hospital where the abortion is to be performed or induced;

(D) The physician who performs or induces, or attempts to perform or induce, the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in such physician's good faith medical judgment, based upon the facts known to the physician at the time, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a significantly greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion;

(E) The physician certifies in writing the available methods of abortion or techniques considered and the reasons for choosing the method of abortion or technique employed; and

(F) The physician who performs or induces, or attempts to perform or induce, the abortion has arranged for the attendance in the same room in which the abortion is to be performed or induced, or attempted to be performed or induced, at least one (1) other physician who is to take control of, provide immediate medical care for, and take all

reasonable steps necessary to preserve the life and health of the unborn child immediately upon the child's complete expulsion or extraction from the pregnant woman.

(4) A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of subsection (b) is not guilty of violating subsection (b), or of attempting to commit or conspiring to commit a violation of subsection (b).

(d)

(1) Except in a medical emergency that prevents compliance with this subsection (d), a physician shall not perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman, unless, prior to the performance or inducement of the abortion, or the attempt to perform or induce the abortion, the physician determines, in the physician's good faith medical judgment, that the pregnancy is not viable.

(2) In making a determination under subdivision (d)(1), the physician shall use a test that is:

(A) Consistent with the physician's good faith understanding of standard medical practice; and

(B) Appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and the woman's pregnancy.

(e) Except in a medical emergency that prevents compliance with this subsection (e), a physician making a determination under subdivision (d)(1) shall record in the pregnant woman's medical record the estimated gestational age of the unborn child, the test used for detecting a fetal heartbeat, the date and time of the test, and the results of the test.

(f)

(1) A violation of subsection (b) is a Class C felony.

(2) A violation of subsection (d) or (e) is a Class A misdemeanor.

(g)

(1) The applicable licensing board shall revoke the license of any person licensed to practice a healthcare profession in this state who violates subsection (b) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, without regard to whether the person has been charged with or has been convicted of having violated subsection (b) in a criminal prosecution. In any proceeding brought by the board of medical examiners or the board of osteopathic examination to revoke the license of a physician for violating subsection (b), a physician who has not been convicted in a criminal prosecution of having violated subsection (b) may raise the affirmative defense set forth in subdivision (c)(1).

(2) The applicable licensing board shall suspend, for a period of not less than six (6) months, the license of any person licensed to practice a healthcare profession in this state who violates subsection (d) or (e) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, without regard to whether the person has been charged with or has been convicted of having violated subsection (d) or (e) in a criminal prosecution.

(h) As used in this section:

(1) "Abortion" means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus;

(2) "Gestational age" or "gestation" means the age of an unborn child as calculated from the first day of the last menstrual period of a pregnant woman;

(3) "Medical emergency" means a condition that, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create;

(4) "Pregnancy" and "pregnant" mean the human female reproductive condition, of having a living unborn child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth;

(5) "Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. Such conditions include preeclampsia, inevitable abortion, and premature rupture of the membranes and, depending upon the circumstances, may also include, but are not limited to, diabetes and multiple sclerosis, but does not include any condition relating to the woman's mental health;

(6) "Unborn child" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth; and

(7) "Viable" and "viability" mean the presence of an intrauterine fetus with a heartbeat.

(i) This section does not repeal or limit § 39-15-202 or § 39-15-209.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following appropriately designated section:

(a) If any or all of the provisions of this act are ever temporarily or permanently restrained or enjoined by judicial order, then all other provisions of Tennessee law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; except, that whenever the temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, the provisions shall have full force and effect.

(b) If Section 1 of this act is temporarily or permanently restrained or enjoined by judicial order, then § 39-15-211(a)(7) as it existed prior to the effective date of this act is revived; except, that whenever the temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, Section 1 shall have full force and effect as it appears in this act.

(c) Mindful of *Leavitt v. Jane L.*, 518 U. S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the general assembly that every provision, section, subsection, sentence, clause, phrase, or word in this act, and every application of the provisions in this act, is severable from each other. If the application of any provision in this act to any person, group of persons, or circumstance is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the general assembly's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this act to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the general assembly had enacted a statute limited to the persons, group of persons, or

circumstances for which the statute's application does not present an undue burden.

The general assembly further declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this act, would be declared unconstitutional or represent an undue burden.

SECTION 3. This act shall take effect July 1, 2019, the public welfare requiring it.